IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092(MBK)
Plaintiff,	.	
v.	.	
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000,	.	
Defendants.	.	June 13, 2023
	.	10:00 a.m.

TRANSCRIPT OF

DEBTOR'S MOTION FOR ENTRY OF AN ORDER SEALING THE EXHIBITS TO THE SUPPLEMENTAL DECLARATION OF JOHN K. KIM REGARDING PLAN SUPPORT AGREEMENTS [397]. UNITED STATES TRUSTEE'S MOTION TO COMPEL COMPLIANCE WITH FED. R. BANKR. P. 2019 [467]. AD HOC COMMITTEE OF SUPPORTING COUNSEL'S MOTION TO FILE UNDER SEAL AND REDACT CERTAIN INFORMATION IN VERIFIED STATEMENT OF PAUL HASTINGS LLP, COLE SCHOTZ P.C., AND PARKINS & RUBIO LLP PURSUANT TO BANKRUPTCY RULE 2019 [471]. DEBTOR'S MOTION FOR AN ORDER (I) SCHEDULING HEARING ON APPROVAL OF DISCLOSURE STATEMENT; (II) ESTABLISHING DISCLOSURE STATEMENT OBJECTION DEADLINE; AND (III) GRANTING RELATED RELIEF [240]

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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TRANSCRIPT OF (Continued)

DEBTOR'S MOTION FOR AN ORDER AUTHORIZING IT TO ENTER INTO AN EXPENSE REIMBURSEMENT AGREEMENT WITH AD HOC COMMITTEE OF SUPPORTING COUNSEL [575]THE OFFICIAL COMMITTEE OF TALC CLAIMANTS' MOTION TO TERMINATE THE DEBTOR'S EXCLUSIVE PERIOD PURSUANT TO 11 U.S.C. § 1121(D)(1) [702] DEBTOR'S MOTION FOR A BRIDGE ORDER CONFIRMING THE AUTOMATIC STAY APPLIES TO CERTAIN ACTIONS ASSERTED AGAINST AFFILIATES OR TEMPORARILY EXTENDING THE STAY AND PRELIMINARY INJUNCTION TO SUCH ACTIONS PENDING A FINAL HEARING ON THE REQUESTED RELIEF [ADV. DKT. 147] DEBTOR'S MOTION (I) TO EXTEND AND MODIFY THE PRELIMINARY INJUNCTION ORDER AND (II) FOR CONFIRMATION THAT SUCCESSOR LIABILITY ACTIONS ARE SUBJECT TO THE AUTOMATIC STAY [ADV. DKT. 163]

APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. 2727 North Harwood Street, Suite 500 Dallas, TX 75201
For Various Talc Claimants:	Levy Konigsberg, LLP By: MOSHE MAIMON, ESQ. 101 Grovers Mill Road, Suite 105 Lawrence Township, NJ 08648
For Catherine Forbes:	Cohen, Placitella & Roth, P.C. By: CHRISTOPHER M. PLACITELLA, ESQ. 2001 Market St, Suite 2900 Philadelphia, PA 19103
Proposed for TCC:	Otterbourg, P.C. By: ADAM SILVERSTEIN, ESQ. 230 Park Avenue New York, NY 10169
US Trustee:	Office of United States Trustee By: LAUREN BIELSKIE, ESQ. Office of The United States Trustee One Newark Center 1085 Raymond Boulevard Suite 2100 Newark, NJ 07102
For Talc claimant:	Maune Raichle Hartley Frency & MUdd By: CLAY THOMPSON, ESQ.
For Brandi Carl:	Golomb Spirt Grunfeld By: RICHARD GOLOMB, ESQ. 1835 Market Street Suite 2900, Philadelphia, PA 19103
For Ad Hoc Committee of Supporting Counsel:	Paul Hastings LLP By: KRIS HANSEN, ESQ. 200 Park Avenue New York, NY 10166
For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Brown Rudnick By: DAVID J. MOLTON, ESQ. 7 Times Square New York, NY 10036

APPEARANCES CONTINUED:
APPEARING VIA ZOOM:

For Eagles claimants:	Kazan McClain Satterley & Greenwood By: JOSEPH SATTERLEY, ESQ. (Via Zoom) 55 Harrison St. Suite 400 Oakland, CA 94607
For Paul Crouch, individually and on behalf of Estate of Cynthia Lorraine Crouch:	Ruckdeschel Law Firm, LLC By: JONATHAN RUCKDESCHEL, ESQ. 8357 Main Street Ellicott City, MD 21043

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each of the three instances. Next slide, please.

So first of all, we think the Court was correct when it concluded that our predecessor had assumed all liabilities, including contingent and future product liability claims. Notwithstanding some language in the indemnity itself. And you may remember the language at issue was language that talked about liabilities included in or allocated -- I forget the exact words, on the books or records.

And that was really supported in four different respects. One by the language of the 1979 agreement itself. The circumstances and course of performance between the parties since 1979. Case law that was very much on point involving factual situations, highly similar. And then the indemnification provisions in the merger support agreement itself. And I'm talking about the divisional merger support agreement. Next slide, please.

So there are many slides that we provided and there was a significant amount of evidence in the record on this, Your Honor. But I mean the point is, that the, this was at a point in time, Your Honor may recall, when J&J was basically transferring the entirety of business operations to subsidiaries. It did it with its baby powder business. And in connection with that, the subsidiary to which the operations were transferred agreed to assume all the liabilities. And just here we've highlighted some of the very, very broad language

that was reflected in there.

And it was a forever indemnification, it was assuming all debt, all indebtedness, all liabilities of every kind, of every description. Next slide, please.

We had meeting minutes from Board of Directors meetings that said that in furtherance of J&J's longstanding policy of decentralization when they were moving all of these assets out, the 79 agreement was intended to transfer all assets to subsidiaries who in turn would assume the liabilities.

And the evidence was, and I think this supported your finding as well, that since the 79 transaction and at all times prior to the 2021 restructuring, all the costs associated with the talc litigation had been borne by all JJCI or its predecessors, and that included defense costs. It included settlements, it included verdicts, whether they had punitive damage aspects to them or not. It included everything. Next slide.

And then Your Honor probably recalls, there were two cases that we cited. One was a Third Circuit case, the Bouton case, the other was a Eastern District of Pennsylvania case, the Bippus case, very similar facts to our facts where there are arguments being made that, well the liabilities at issue doesn't, wasn't covered because in the first case it wasn't reflected or reserved against in the financial statements. And

a similar effort, a similar argument was made in the Bippus case about liabilities and obligations reflected on the balance sheet. And notwithstanding that, the Court said no, the language is broad enough to pick up liabilities that weren't specifically enumerated in the financial records. Next slide, please.

And then of course there was the, as Your Honor knows, the indemnity that was contained in the divisional merger support agreement as well. So there were four bases on which the Court could make the finding that it did. I don't know why the Third Circuit raised this issue. And as I recall kind of highlighted the books and records language. But to us the facts were clear on this point. The law was supportive on this point. And the Court's finding was accurate and in our view does not need to be revisited. Next slide.

So the second issue raised by the Third Circuit is the question of the coverage of punitive damages. And again I think we can kind of start where I started before with respect to the first issue, which is if the indemnity obligations were broad, there was nothing that suggested they were limiting in any way. Again the parties' course of conduct was fully consistent with a conclusion that punitive damages were intended to be covered because they were. I mean they were allocated to and borne by Old JJCI or its predecessors.

The other thing I think that's important to remember

is that I suppose a policy argument could be advanced, and maybe this is what the Third Circuit had in mind, that it's not appropriate for there to be an indemnity for punitive damages because the wrongdoer shouldn't be able to pass that liability onto another entity.

But I think what's important here, even if you believe that that would have some applicability and it would overcome the documents and the intent, here they're all part of the same corporate enterprise. And so by moving this to, or having a subsidiary with the business cover the obligation, still impacts the ultimate owner. So ultimately impacts the equity value of J&J. So to me that policy argument wouldn't apply in any event.

And the only arguments I think that have ever been advanced to suggest that punitive damages couldn't be indemnified are cases involving either insurance or public entities, and those just have no application here.

So again we think the, we think the conclusion here should clearly be that punitive damages are covered. Next slide, please.

And you know, just to take a look at a couple of cases, they're not entirely on point. But we have this Cozzi case as well as the Lateo (phonetic) case. And these were situations where the courts were wrestling somewhat with policy issues like what I was referring to. And in both cases the

courts found that no, that wasn't enough to overcome what is clearly indicated by the language that was used by the parties. And in our case it's not only the language, it's the multiple years of course of performance as well. Next slide, please.

On the Shower to Shower, again it's not clear to me why the Third Circuit raised an issue with this, because we did put in evidence on this what we had, in terms of going back over a long period of time and showing Your Honor the documents that we did have. But this maybe a slide that we showed before and I'm not going to spend a lot of time on it. But you know, ultimately the Shower to Shower products, you know, we kind of worked our way through the time line of how they ultimately, the responsibility for liabilities associated with those products ended up with Old JJCI, you know, through an entity that was called Personal Products Company. And that started from a transfer that came from J&J where the assets and liabilities of Shower to Shower were transferred to that Personal Products Company.

If you go to the next slide, you may recall that we showed some documents like this. There was an internal letter that said that Personal Products Company will take full responsibility for Shower to Shower on January 1, 1978. And if you go to the next slide, similar, this was in a 10K from 1979 referring to Personal Products Company and the products it sold. And one of them of course was Shower to Shower brand

that unequivocally, Your Honor. We are here for all of the top claimants and we will be working our tail off. We have been through the first case, through this case. That's not going to end.

Nothing further, Your Honor.

THE COURT: Thank you, Counsel, and welcome again.

Anyone else?

(No verbal response.)

THE COURT: All right. Mr. Prieto?

MR. PRIETO: I think I'm good, Your Honor.

THE COURT: All right. All right. I think other than the uncontested matters, we're done. Correct?

UNIDENTIFIED MALE SPEAKER: Yes.

THE COURT: As far as items on the agenda. Then let me go through with rulings. I'll go backwards.

We'll start with the reimbursement requests for the Ad Hoc Committee. This court does not look to reverse itself on its analysis as part of the appropriateness of 503(b), or more importantly, the use of 363 in authorizing the debtor in possession to seek to enter into a reimbursement agreement with professionals for the Ad Hoc Committee as it did in the prior case. The same analysis as far as the legal analysis would come into play. There are differences here, no doubt, but this court is persuaded that the role of the Ad Hoc Committee in this case, in the present case, is important to assist the

debtor in trying to facilitate the -- an agreement with talc claimants, an ultimate agreement with the plan to -- to identify issues of concern to the talc claimant community, and to work to support in this case the debtor's efforts, but also the interests of the bankruptcy estate. The committee lends a voice to a group of claimants or potentially thousands of claimants who at this juncture, hold a differing view from the direction of this case. That doesn't mean that views don't change. Attorney views change, client views change as cases progress. There is nobody who I ever view as should be locked into a case and I don't expect Mr. Hansen, the Ad Hoc Committee or the underlying claimant council or the underlying claimants be locked in to any position as this case unfolds, to the extent this case of bolts beyond the motion to dismiss. But there is no reason for this court not to defer to the business judgment of the debtor as recognized by the courts and Mallinckrodt and Purdue and others.

I won't disagree with the analysis of Judge Silverstein and in the Boy Scout case. We have different facts, a different fact pattern here. There is no -- there's nothing to suggest to this court that reimbursement by the debtor for the fees and expenses of the Ad Hoc group will diminish in any way any recovery by talc -- by claimants in this case. I hear much to the opposite about how well healed the debtor is and all the affiliates. So it's -- it is -- it's

just nonsensical to believe that the money spent on the professionals will have any meaningful prejudicial impact at all, on the talc claimants.

As to potential conflicts, I expect the US Trustee to investigate and can take action in the other wonderful case I'm lucky to have, Whittaker, Clark & Daniels, if it's appropriate with the with the with the Cole Schotz firm or -- or any other potential conflict. I will require that compensation be consistent with the interim order for professionals in this case, and be subject to a section 330 review, so that there is a standard for review -- a reasonableness standard. So, counsel can, to the extent appropriate, submit a form of order.

With respect to the committee's motion seeking to terminate exclusivity, I am very much guided by -- I think it was Judge Gerber in Adelphi who looked at this -- the critical issue, the critical factor to be whether terminating exclusivity will actually move a case forward; what is the benefit to the overall structure of the case. In candor, I'm not there yet. I think I need more information.

What I hear on both sides is potential litigation, substantial issues to be resolved on any plan, and doubling it at this juncture may not be prudent, but I'm not prepared to say it's not the right pathway. I'm just not there yet. And I'm going to defer and carry this as was suggested until after the motion to dismiss. I think the motion to dismiss is a